

IN THE MATTER OF ARBITRATION BETWEEN

ST. PAUL FIREFIGHTERS)	ARBITRATION
LOCAL 21)	AWARD
)	
)	
and)	RADATZ
)	SICK SLIPS
)	GRIEVANCE
)	
)	
CITY OF ST. PAUL)	BMS CASE NO. 06-PA-56

Arbitrator: Stephen F. Befort

Hearing Date: December 6, 2005

Post-hearing briefs received: January 9, 2006

Date of decision: February 3, 2006

APPEARANCES

For the Union: Mark W. Gehan

For the Employer: John B. McCormick

INTRODUCTION

St. Paul Firefighters Local 21 (Union) brings this grievance as exclusive representative claiming that the City of St. Paul (Employer) violated the parties' collective bargaining agreement by failing to reimburse unit member Dave Radatz for the costs he incurred in visiting a doctor to obtain a "sick slip" as required by the Employer of employees who have used more than 72 hours of sick leave in a calendar year. The Employer denied the grievance and this matter proceeded to an arbitration hearing at

which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

- 1) Is this dispute arbitrable?
- 2) Did the Employer violate the parties' collective bargaining agreement when it declined to reimburse the grievant for the cost of a health insurance deductible incurred in visiting a doctor and obtaining a "sick slip" as required by the Employer's sick leave policy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 6 – EMPLOYEE RIGHTS – GRIEVANCE PROCEDURE

6.1 Definition of a Grievance

A grievance is defined as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement. It is specifically understood that any matters governed by civil service rules or statutory provisions shall not be considered grievances and subject to the grievance procedure hereinafter set forth. No disciplinary action which may be appealed to a civil service authority will be considered a grievance and subject to the grievance procedure herein.

6.4 Procedure, Step 1

Grievances, as defined by Section 6.1 shall be resolved in conformance with the following procedure:

Step 1: An Employee claiming a violation concerning the interpretation or application of this Agreement shall within twenty-one (21) calendar days after such alleged violation has occurred present such grievance in writing to the Employee's supervisor as designated by the Employer. The Employer designated representative will discuss and give an answer in writing to such Step 1 grievance within ten (10) calendar days after receipt.

A grievance not resolved in Step 1 and appealed to Step 2 shall be placed in writing by the Union setting forth the nature of the grievance, the facts on which it is based, the provision or provisions of the Agreement allegedly violated, the remedy requested, and shall be appealed to Step 2

within ten (10) calendar days after the Department-designated representative's final answer in Step 1. Any grievance not appealed in writing to Step 2 by the Union within ten (10) calendar days shall be considered waived.

6.6 Waiver

If a grievance is not presented within the time limits set forth above, it shall be considered "waived." If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at the step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual written agreement of the Employer and the Union in each step.

ARTICLE 14 - INSURANCE

14.1 Plans

The insurance plans, premiums for coverages and benefits contained in the insurance plans offered by the Employer shall be solely controlled by the contracts negotiated by the Employer and the benefit providers. The Employer will attempt to prevent any changes in the benefits offered by the benefit providers. However, the employees selecting the offered plans agree to accept any changes in benefits which a specific provider implements. If in any year the number of plans increases, the increase will be based on the average premium.

ARTICLE 19 – SICK LEAVE AND PARENTAL LEAVE

19.1 As provided in City of St. Paul Civil Service Rules Section 20. In addition to the relatives listed in Section 20.B of the Civil Service Rules, accumulated sick leave credits may be granted in the event of the death of the employee's stepparent or stepchild and one day of sick leave to the funeral of the employee's grandparent or grandchild.

FACTUAL BACKGROUND

This grievance concerns the interplay between the Employer's sick leave policy and the contractually-provided health care policies made available to unit employees. Each is briefly described below.

For more than twenty years, the St. Paul Fire Department has had a sick leave policy requiring employees to obtain a “sick slip” signed by a doctor once the employee has exceeded 72 hours of sick leave usage during any calendar year. The parties’ current collective bargaining agreement in Article 19 expressly incorporates the sick leave policy set out in Rule 20 of the City’s Civil Service Rules. Rule 20.C. states that an “appointing officer or the Human Resources Director may require a physician’s certificate or additional certificates at any time during an employee’s illness.” The Fire Department has implemented this policy for 56-hour employees in Standard Operating Procedure 103.2. This procedure states, in relevant part, as follows:

If an employee uses more than 72 hours of sick leave during a given calendar year, he/she will be required to obtain a doctor’s certificate for the remainder of the calendar year for any further sick leave use. (Excluding funeral leave, child care, and dependent care).

The employee must be seen by a physician and must have a DFSS Form #29 or other approved physician’s documentation for any further sick leave use unless a variance is granted by the Fire Chief in accordance with the Sick Leave Policy. If an employee is not seen by a physician and does not get a signed slip when under this provision, leave without pay will result.

The Union does not dispute the Fire Department’s authority to request sick slips under this policy.

The Employer also has a long history of sponsoring health care insurance plans for its employees. Until recently, Employer contributions fully financed the cost of such coverage for individual employees. Since 2001, however, all of the health plans sponsored by the Employer have provided for some form of employee cost sharing. Each of the four health care plans currently offered by the Employer, for example, requires employees to finance a portion of their health care coverage in the form of either an office co-payment or a deductible.

The grievant, David Radatz, is a unit fire equipment operator who works on a 56-hour schedule. Radatz called in sick on three days during January 2005. Based on SOP 103.2, the Employer notified Radatz that he would need to obtain a doctor's certificate for any additional sick leave used during the 2005 calendar year. Radatz missed work again because of illness on February 24, 2005, and he visited a doctor to obtain the required sick slip. Radatz's health care plan charged him a deductible of \$58.91 for the cost of this examination. Radatz then sought reimbursement from the Fire Department for the amount of this charge. The department declined the reimbursement request and this grievance followed.

POSITIONS OF THE PARTIES

Union:

The Union initially contends that this grievance is arbitrable as a dispute concerning sick leave and is properly before the arbitrator. As to the merits, the Union argues that the Employer's practice of requiring an employee to pay a portion of the costs associated with obtaining a sick slip violates Minn. Stat. § 181.61. This provision makes it unlawful for "any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment." The Union maintains that the Employer's sick slip policy offends this statute in that it makes an employee's payment for a sick slip examination a condition of returning to work. Alternatively, even if the sick slip requirement only serves as a prerequisite for an employee to obtain sick leave pay, such a requirement nonetheless constitutes a term and condition of employment within the scope of section 181.61.

Employer:

The Employer asserts that this dispute is not arbitrable on both procedural and substantive grounds. Most significantly, the Employer points to a provision of the parties' collective agreement that excludes matters governed by statutory provisions from the definition of an arbitrable grievance. Even if the dispute is arbitrable, the Employer contends that section 181.61 only pertains to examinations that are required as a condition of an employee's initial hire or return to work. Since, according to the Employer, the sick slip policy only serves as a condition for the receipt of sick leave pay, the policy does not run afoul of section 181.61.

DISCUSSION AND OPINION**Arbitrability**

The Employer claims that this grievance is not arbitrable for the following three reasons:

- 1) The grievance concerns the design and benefits of City health plans and, as such, is not arbitrable under Article 14.1 of the parties' agreement;
- 2) The subject matter of the grievance is untimely and has been waived by the Union by virtue of Article 6.6 of the agreement; and
- 3) The Union's claim based on Minn. Stat. § 181.61 is a matter of statutory construction excluded from arbitration by Article 6.1 of the agreement.

While I have doubts concerning the validity of the Employer's first two claims, I find that the Employer's third objection has merit and renders this dispute to be beyond arbitral jurisdiction.

The issue of arbitrability is a matter governed by the parties' contractual agreement. While the Supreme Court has counseled that a finding of arbitrability generally is favored, the parties are free to withhold matters from arbitration by the terms of their contractual arrangement. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

The parties have done just that in their collective bargaining agreement. Section 6.1 of the agreement defines a grievance subject to arbitration "as a dispute or disagreement as to the interpretation or application of the specific terms and conditions of this Agreement." More specifically, that same provision goes on to exclude matters of statutory construction from the scope of arbitration, stating:

. . . It is specifically understood that any matters governed by civil service rules or statutory provisions shall not be considered grievances and subject to the grievance procedure hereinafter set forth.

This contractual language precludes arbitral jurisdiction over the grievance asserted in this case. The Union's claim does not call for an interpretation of any portion of the parties' agreement. The collective bargaining agreement is wholly silent on the question of who is responsible for paying the cost of a sick slip examination. Neither Article 14 dealing with insurance, nor Article 19 dealing with sick leave touch on this subject. Instead, the Union's claim is based solely on a construction of Minn. Stat. § 181.61. Since the parties' agreement expressly withholds matters of statutory construction from the grievance process, this matter is not within the contractually agreed upon scope of arbitral jurisdiction. Accordingly, I conclude that this matter is not substantively arbitrable.

The Merits

Having determined that I am without jurisdiction in this matter, it is unnecessary to address the merits of the Union's claimed violation. In addition and more specifically, it also would be inappropriate to comment on the merits of this particular grievance since the potential exists for a future judicial construction of the statutory provision at issue.

AWARD

The grievance is denied.

Dated: February 3, 2006

Stephen F. Befort
Arbitrator